

Selection report and other documents relating to National Registrar Rohan Muscat

[Mircea](#) made this Freedom of Information request to [Federal Court of Australia](#)

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The request was **partially successful**.

Mircea April 27, 2022

Delivered

Dear Federal Court of Australia,

I refer to an article published in the Australian on 8 February 2022. The title of the article is Untried lawyers score key positions (see: <https://www.reddit.com/r/auslaw/comments...> (https://web.archive.org/web/20221112063000/https://www.reddit.com/r/auslaw/comments/sn1a9s/untried_junior_lawyers_score_key_federal_court/)).

In that article the journalists note that a male "legal case manager was offered a position as national registrar in September 2018 - over other experienced solicitors - months before he completed his College of Law training course."

One of those experienced candidates who applied for the national registrar position that the male legal case manager was appointed to "had been a litigator since 1994 specialising in Federal Court matters. She had previously been a deputy district registrar with the court, lectured at the University of NSW and had published several books about Federal Court litigation." After conducting searches on the internet the only female that I have been able to identify as meeting that description is Dr Natalie Cujes of UNSW Canberra. Her profile can be accessed here: <https://www.unsw.adfa.edu.au/natalie-cujes> (<https://web.archive.org/web/20221112063000/https://www.unsw.adfa.edu.au/natalie-cujes>)

The articles notes that despite being "offered a position as national registrar in September 2018 - over other experienced solicitors - months before he completed his College of Law training course" the male legal case manager was only admitted to the Supreme Court of a State or Territory in February 2019. Admission to the Supreme Court of a State or Territory was a mandatory requirement for selection. So was "litigation and case management experience in superior courts of Australia." It would appear that the legal case manager who was offered a position as a national registrar in September 2018 did not meet those mandatory requirements because a person who had not been admitted could not possibly have a practising certificate and without a practising certificate a person cannot be involved in litigation before the superior courts of Australia.

The article notes that the selection process was the subject of an investigation by acting assistant commissioner Kate McMullan of the Australian Public Service Commission. It has since come to light that Ms McMullan's investigation was an investigation under the Public Interest Disclosure Act 2013 and that the way that Ms McMullan handled her investigation is now the subject of an investigation by the Commonwealth Ombudsman under section 8 of the Ombudsman Act 1976. So serious are the allegations about the manner in which Ms McMullan handled the PID investigation that the Ombudsman has escalated the investigation of the way Ms McMullan's handled the PID investigation to a category 4 investigation (see: Spotlight shines back on watchdog, published on page 3 of the Australian on 29 March 2022 and <https://www.righttoknow.org.au/request/r...> (https://web.archive.org/web/20221112063000/https://www.righttoknow.org.au/request/request_for_correspondence_issue#incoming-25017)).

It is apparent from the annual reports of the Federal Court that only 3 males have held the position of National Registrar in the Court. Those three males are Adam Bundy, David Priddle and Rohan Muscat.

Clearly all three were successful in being engaged as National Registrars and that they were successful in being engaged as National Registrars is public information.

Under the FOI Act, I would like access to:

- a) the selection report prepared by the selection committee that selected Mr Rohan Muscat for the position of National Registrar;
- b) the offer provided to Mr Muscat in September 2018 for the National Registrar position; and
- c) any and all documents constituting Mr Muscat's application for the National Registrar role including his CV/ resume and any responses to questions provided as part of his application.

Please do not redact Mr Muscat's name from any documents. It is public information that he succeeded in securing the national registrar role. It is also public information that he succeeded in securing that role over more qualified and meritorious candidates.

Please do not redact the names of the members of the selection panel. I would like to know the names of those people who selected a comparatively under-qualified and unmeritorious candidate for the national registrar role.

Please do not redact any date information from the documents.

You are welcome to redact telephone numbers, residential addresses and email addresses.

Please provide all documents to me by return email.

Yours faithfully,

Mircea

External FOI, Federal Court of Australia **May 03, 2022**

1 Attachment

2022 05 03 Acknowledgement letter Mircea.pdf

136K **Download View as HTML**

OFFICIAL

Dear Mircea

Please find attached correspondence from the Federal Court of Australia.

Kind regards

FOI Officer

Federal Court of Australia

show quoted sections

External FOI, Federal Court of Australia **May 17, 2022**

1 Attachment

2022 05 17 Extension to FOI Request Mircea.pdf

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Dear Mircea

Please find attached correspondence from the Federal Court of Australia.

Kind regards

FOI Officer

Federal Court of Australia

show quoted sections

External FOI, Federal Court of Australia **June 27, 2022**

2 Attachments

2022 06 27 FOI Response Mircea 27 April 2022.pdf

338K **Download View as HTML**

Signed Selection Report National Registrars.pdf

192K **Download View as HTML**

OFFICIAL

Dear Mircea

Please find attached correspondence from the Federal Court of Australia.

Kind regards

FOI Officer

Federal Court of Australia

show quoted sections

Mircea July 23, 2022

Delivered

Dear B Henderson,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request a complete internal review of Federal Court of Australia's handling of my FOI request 'Selection report and other documents relating to National Registrar Rohan Muscat'.

I take issue with the redactions applied to the selection committee's report.

The Scout Reference Number is not personal information. It is not deliberative content. The s 47E conditional exemptions do not apply to it. Please remove the redaction.

The number of applications received for the National Registrar role is not personal information. It is not deliberative content. The s 47E conditional exemptions do not apply to that number. Please remove the redaction.

The number of candidates shortlisted is not personal information. It is not deliberative content. The s 47E conditional exemptions do not apply to that number. Please remove the redaction.

Why have the names of the members of the selection panel been redacted? Which of the conditional exemptions apply in redacting the names of the members of the selection panel? That is not clear from your decision. For the record, I know that the members of the selection panel were Sia Lagos, David Pringle and Andrea Jarratt.

Why have Sia Lagos' and David Pringle's signatures been redacted? Those signatures are already published

online.

Ms Lagos' signature has been published in the Annual Reports of the Federal Court. Ms Lagos' signature is published on the orders of the Federal Court. Ms Lagos' signature has been published on the Federal Court's disclosure log (e.g. PA2925-06/48).

David Pringle's signature is published on the Federal Court's disclosure log (e.g. PA2925-06/48). David Pringle's signature is published on the orders of the Federal Circuit and Family Court of Australia.

Why have the dates on which they signed the selection report been redacted? Date information is not personal information. It is not deliberative content. The s 47E conditional exemptions do not apply to the dates recorded. For the record, I know that the date on which the selection process was finalised was 5 October 2018, and that is the date recorded under their signatures. Please remove the redactions over the dates under the panel members' signatures.

Why has the agency head's delegate's approval of the recommendations of the selection panel been redacted? That is not deliberative content. That approval signifies a decision approving the recommendations of the selection panel. Nor is an approval of the recommendations of the selection panel personal information. Nor could the disclosure of the approval decision be covered by the conditional exemptions in s 47E of the FOI Act. Please remove the redaction.

Why has the agency head's delegate's name been redacted? Sia Lagos was the agency head's delegate. I suggest that the mere fact that her name is on the document does not mean that s 47F applies and, even if s 47F does apply, there is no public interest in denying the public access to the name of the person who approved the decision of the selection panel. In any case, the redaction cannot have been made because the decision is a deliberation. That would be contradictory. Section 47C does not apply to that redaction. Nor could it be claimed that s 47E applies to that redaction. Please remove the redaction.

Why have you redacted Mr Muscat's name from the candidates selected? If the selection document you have provided in response to a request for "the selection report prepared by the selection committee that selected Mr Rohan Muscat for the position of National Registrar", it seems silly to redact the name of the candidate who was selected by the selection committee. The provision of a selection report prepared by the selection committee that selected Mr Rohan Muscat for the position of National Registrar entails that Mr Muscat was selected by the selection committee. It's silly to redact Mr Muscat's name. Please remove the redaction over his name.

Why have you redacted the status associated with Mr Muscat's name? He was a recommended candidate, was he not? He was selected as a National Registrar. His selection is public information by virtue of his inclusion in lists of registrars of the Court. How is the status information covered by s 47F? How is the status information covered by s 47E? How is the status information covered by s 47C? Even if s 47C applies, given that it is public information that Mr Muscat is a National Registrar of the Court, and has been since 2018, why is it necessary, on public interest grounds, to redact the status associated with his name? Please remove the redaction.

You should remove the redaction over the selection committee's deliberations about Mr Muscat's suitability. Given that Mr Muscat was not admitted to the Supreme Court of a State or Territory when he was selected, and given that Mr Muscat did not have case management experience in the superior courts of record of Australia when he was selected (a person not admitted to the Supreme Court of a State or Territory cannot hold a practising certificate and, accordingly, could not have experience managing cases before superior courts of record in Australia), and given that both those requirements were essential to selection (see

<https://www.reddit.com/r/auslaw/comments...> (https://web.archive.org/web/20221112063000/https://www.reddit.com/r/auslaw/comments/sn1a9s/untried_junior_lawyers_score_key_federal_court/)), I do wonder how the selection committee came to the conclusion that Mr Muscat was a suitable candidate for the role. There is a public interest in determining how decisions to select registrars of the Federal Court are carried out, particularly in the light of the surrounding circumstances, which are disclosed by other documents requested in this FOI request.

I take issue with your refusal to provide access to the offer provided to Mr Muscat in September 2018 for the National Registrar position. Why do the conditional exemptions apply to the offer document? As you know, the selection committee finalised the selection process on 5 October 2018. Are you concerned that the document recording the offer of employment as a National Registrar, which is dated 7 September 2018 and, thus, predates the selection committee's report by 28 days, and predates the agency head's delegate's recommendation of the selection committee's recommendations by 28 days, might tend to demonstrate that Mr Muscat was offered the National Registrar role before the selection committee finalised the merit based selection process? Are you concerned that the offer document, which is dated 7 September 2018, might tend to demonstrate that Ms Lagos' approval of the selection committee's recommendation was farcical? Are you concerned that the document containing the offer of employment, extended to Mr Muscat by Andrea Jarratt on 7 September 2018, in which Ms Jarratt notes "I am pleased to advise that you have been offered ongoing employment in the Federal Court of Australia", might tend to demonstrate that the selection committee's record of the merit based selection process was really nothing more than an ex post facto charade to legitimate the decision to offer Mr Muscat employment as a National Registrar?

As you know, the conditional exemptions in s 47E have no application to documents that tend to demonstrate, whether on their face, or in the light of other cogent evidence, unlawfulness. Section 47E has no application to that employment offer.

Nor are records of dates in that documents (both the date of the offer and the date of the acceptance of the offer), the terms and conditions of employment, the classification allocated to Mr Muscat under rule 6 of the Classification Rules, the position number, the employment status, the commencement date, the job title, and like information, personal information or deliberative information. Therefore ss 47F and 47C have no application to the document in these regards. Please provide access to the document according to law.

I take issue with your refusal to provide access to any and all documents constituting Mr Muscat's application for the National Registrar role including his CV/resume and any responses to questions provided as part of his application.

Section 47E has no application to such documents (Re Dyki and Federal Commissioner of Taxation (1991) 22 ALD 124).

Take for example the responses Mr Muscat provided to the questions/requests for information as part of his application.

As you know, all applicants for the National Registrar role had to provide, among other things, responses to the following requests and questions:

1. Please enter a comprehensive statement of claims against the selection criteria.
2. Demonstrated knowledge of the Federal Court's jurisdiction, practices and procedures, or the ability to acquire such knowledge quickly and the ability to interpret and apply rules and regulations.
3. Legal qualifications and admission as a practitioner of the High Court or the Supreme Court of a State or Territory of Australia.

Carefully read those responses; they are unflattering. I am sure the person conducting the internal review will refuse access to the document containing those responses even though such a decision that would contradict the reasons for decision in Re Dyki and Federal Commissioner of Taxation. Nevertheless, I will seek IC review and those responses will invariably be provided to the OAIC. You are probably aware that the FOI Commissioner is Leo Hardiman QC. I'm sure his eyebrow will more than creep upwards when he reads the responses recorded and, in the light of his consideration of Re Dyki and Federal Commissioner of Taxation, makes a decision in respect of access to the document containing the responses.

I accept that s 47F may have application to some parts of the application documents. It is reasonable for you to redact Mr Muscat's email address, his residential address, his contact numbers, and his signatures from the application documents.

Otherwise, there is no public interest in refusing access to the documents requested.

Consider one of his referees – David Pringle. Is it merely coincidence that Mr Pringle was on the selection committee?

Consider the fact that the journalists at The Australian have noted that Andrea Jarratt conceded the fact that Mr Muscat had only received his law degree in the year prior to an email she sent in November 2018 (<https://www.reddit.com/r/auslaw/comments...> (https://web.archive.org/web/20221112063000/https://www.reddit.com/r/auslaw/comments/sn1a9s/untried_junior_lawyers_score_key_federal_court/)). If the CV demonstrates this fact, does that not strike at the heart of Mr Muscat's merits as a candidate?

Consider the fact that Mr Muscat was still enrolled in a practical legal training course when he applied for the National Registrar role in May 2018.

Consider the concern Mr Soden had about Mr Muscat's lack of experience.

Consider the public interest in the Australian community knowing that people selected to work as registrars of the Federal Court have legal experience, are not recent university graduates, do meet essential selection criteria, and have referees who might have a conflict of interest if they participate in the selection process.

Please provide access to any and all documents constituting Mr Muscat's application for the National Registrar role including his CV/resume and any responses to questions provided as part of his application, in accordance with the law.

In your reasons for decision, you have claimed that:

- a) the disclosure of the documents may link individuals to the allegations in media articles;
- b) disclosure would damage future employment prospects and reputations;
- c) disclosure may have a detrimental effect on professional relationships both within the Court and the broader legal profession;
- d) the information is such that the Australian community would reasonably regard it as sensitive personal information in which there is no legitimate public interest.

What is your point? The fact that the disclosure of the documents would demonstrate that Sia Lagos, David Pringle and Andrea Jarratt selected an unmeritorious candidate for a role, glossed over the selection of that unmeritorious candidate with a farcical selection process and, thus, engaged in acts of patronage and cronyism in contravention of the Public Service Act 1999 is not a bad thing. It is a good thing. People don't get to break the laws of the Commonwealth and then, under exemptions available in the FOI Act, seek protection from damage to their reputations. They have no right to claim that their standing in the Court, the

legal fraternity and the community will be damaged, or that their prospects of employment will be affected, if knowledge of their acts is made public. All public servants are accountable for their actions and the FOI Act was passed to hold relevant decision makers to account.

As to the claim that the information is such that the Australian community would reasonably regard it as sensitive personal information in which there is no legitimate public interest, it is not clear what information you are referring to. If the information that you are referring to is information that tends to demonstrate that the laws of the Commonwealth were contravened by Sia Lagos, David Pringle and Andrea Jarratt, then that is not sensitive personal information for the purposes of the FOI Act and that information is not something that the Australian community would regard as sensitive personal information. The claim that there is no legitimate public interest in that information being made available to the Australian community is ludicrous.

To be fair to Mr Muscat, it is not his fault that he, a candidate who did not meet essential criteria for the role, was selected by Sia Lagos, David Pringle and Andrea Jarratt for a role he was not fit to perform. He is, of course, the beneficiary of wrongdoing, having pocketed John and Jane Taxpayer's shilling for his troubles (and at the EL1 classification, it's a plump shilling), but he did not break laws relating to merit based selection. He is, somewhat tragically, caught up in this sorry state of affairs by reason of uncritically accepting a position unlawfully offered to him.

A full history of my FOI request and all correspondence is available on the Internet at this address: <https://www.righttoknow.org.au/request/s...> (https://web.archive.org/web/20221112063000/https://www.righttoknow.org.au/request/selection_report_and_other_docum)

Yours faithfully,

Mircea

External FOI, Federal Court of Australia **July 25, 2022**

OFFICIAL

Dear Mircea

I acknowledge receipt of your request below for an internal review of the decision made on behalf of the Federal Court of Australia and dated 27 June 2022.

Kind regards

FOI Officer

Federal Court of Australia

show quoted sections

External FOI, Federal Court of Australia **August 22, 2022**

2 Attachments

Mircea 22 August 2022.pdf

285K **Download View as HTML**

National Registrar Signed Selection Report.pdf

198K **Download View as HTML**

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Dear Mircea

Please find attached correspondence from the Federal Court of Australia.

Kind regards

FOI Officer

Federal Court of Australia

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Federal Court of Australia **August 22, 2022**

[1]Office of the Australian Information Reference Code:
Commissioner ICR_10-50527194-2918

You submitted a form called: FOI Review_

Your form reference code is: ICR_10-50527194-2918

To check the progress of your submission and/or confirm it has been received you should contact the agency that provides the form. These details are displayed below.

Office of the Australian Information Commissioner

[2]<http://www.oaic.gov.au> (<https://web.archive.org/web/20221112063000/http://www.oaic.gov.au/>) | [3]1300 363 992 | [4]**[email address]**
GPO Box 5218, Sydney NSW 2001

Note: Please do not reply to this auto-generated email.

References

Visible links

2. <http://www.oaic.gov.au/> (<https://web.archive.org/web/20221112063000/http://www.oaic.gov.au/>)
3. [file:///tmp/tel:1300 363 992](file:///tmp/tel:1300%20363%20992)
4. [mailto:\[email address\]](mailto:[email address])

Federal Court of Australia **August 22, 2022**

1 Attachment

attachment.pdf

106K **Download** **View as HTML**

Our reference: MR22/01381

By email: [FOI #8812 email]

Receipt of your IC review application

Thank you for your application for Information Commissioner Review (IC review).

The Office of the Australian Information Commissioner (OAIC) is considering your application.

If you wish to advise the OAIC of any changes to your circumstances, including your contact details or if your FOI request has been resolved, please write to [\[email address\]](mailto:[email address]) and quote MR22/01381.

Yours sincerely

Freedom of Information Regulatory Group

Office of the Australian Information Commissioner

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